

1 STATE OF ILLINOIS)
2) SS:
COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE)
STATE OF ILLINOIS) Case No. 92 25414
6 vs) Charge: Murder
7 JESSE CLEMONS) Before: JUDGE EARL E.
) STRAYHORN
) November 19, 1992

8 MOTION TO SUPPRESS

9 RECORD OF PROCEEDINGS had in the hearing of the
10 above-entitled cause.

11 APPEARANCES:

12 HON. JACK O'MALLEY,
State's Attorney of Cook County, by
13 MS. KAY HANLON,
Assistant State's Attorney,
14 appeared on behalf of the People of
the State of Illinois;

15 MR. RANDOLPH N. STONE,
Public Defender of Cook County, by
16 MR. FRED WELLISCH,
Assistant Public Defender,
17 appeared on behalf of the defendant.
18

19
20
21
ROCHINA V. CHOLEWA
22 Official Court Reporter
2650 S. California
23 Chicago, Illinois 60608

24

SP 119089

1

2

INDEX

3

Date of Hearing: November 19, 1992

4

Page Numbers: 1 to 41

5

PROCEEDINGS:

6

LIST OF WITNESSES	DX	CX	RDX	RCK	RDX
-------------------	----	----	-----	-----	-----

7

DET. KENNETH BOUDREAU	6	15	28		
-----------------------	---	----	----	--	--

8

STATE RESTS-----	-----	-----	-----	-----	29
------------------	-------	-------	-------	-------	----

9

ARGUMENT:

10

By: Mr. Wellisch-----	-----	-----	-----	-----	29
-----------------------	-------	-------	-------	-------	----

11

Ms. Hanlon-----	-----	-----	-----	-----	36
-----------------	-------	-------	-------	-------	----

12

COURT RULING-----	-----	-----	-----	-----	40
-------------------	-------	-------	-------	-------	----

13

14

15

16

17

18

19

20

21

22

23

24

1 September, 1991?

2 A. No, ma'am.

3 Q. While you were present on the same days did
4 you ever allow people in the holding cell marked
5 cage to converse with any of the in-custody
6 defendants who were in any of the other rooms

7 A. No, ma'am.

8 MS. HANLON: Thank you, Judge. I have nothing
9 else.

10 THE COURT: Recross?

11 MR. WELLISCH: I have nothing further.

12 THE COURT: Thank you, Dat. Boudreau. You may
13 step down.

14 (Witness excused.)

15 MS. HANLON: We have nothing else in rebuttal.
16 We would rest.

17 (State rests in rebuttal.)

18 MR. WELLISCH: I would like to argue briefly if I
19 might.

20 It is, is a you know in a case where
21 we are seeking to suppress confession, it is the
22 State's burden to prove by the preponderance of the
23 evidence that this confession was not coerced.

24 What do we have or what has the State

1 presented to you and how have we answered that?

2 Essentially the State has presented
3 to you what amounts to mere denials on the part of
4 the various officers who were present, beginning way
5 back when we first had testimony with Dets. O'Brien,
6 Police Officer Maras (ph. sp.), I believe his name
7 was, and Det. Maslanka and today rebuttal of Myron
8 James' testimony by Det. Boudreau; mere denials
9 nothing more than that.

10 We have also raised some questions
11 regarding the injuries of Jesse Clemons.

12 If you remember way back I hope your
13 notes reflect the fact that we have got a couple of
14 the officers noticing injuries.

15 Det. Boudreau did not notice any
16 injury to Jesse's hand but several of the officers
17 who testified earlier did.

18 That raises, should raise a red flag
19 in the Court's mind as to how Jesse got his
20 injuries.

21 Now however what is key, your Honor,
22 is this.

23 While the State presented mere
24 denials on the part of the police we put before you

1 last time Myron James.

2 I hope you will agree that Myron
3 James was a very credible witness.

4 I want to start out by saying Myron
5 James has no motive to lie, to fabricate.

6 He began his testimony by saying "no
7 one ever hit me, no one ever tortured me, no one
8 ever threatened me."

9 He had no axe to grind with any of
10 the police officers; not one.

11 Beyond that why is he credible?
12 Because unlike the police officers who testified or
13 unlike Det. Boudreau, who testified today and
14 supposedly present for this interrogation on this
15 lineup Myron James remembers where each and every
16 person arrested that night was in Area 3, every
17 single one of them.

18 Now let's talk about DO for a
19 minute.

20 You may remember when he testified he
21 said, "I am not quite sure where Diaz Owens was but
22 I remember hearing his voice back here somewhere."

23 So he didn't even try to fabricate
24 that. He walks in and says the first thing he

1 hears, he walks in with Jesse because they come in
2 the same car is, "I hear Marcus Wiggins screaming."

3 "How do you know? You don't see
4 him?"

5 "I grew up with Marcus Wiggins. I
6 know his voice. He was screaming."

7 During the rest of his testimony,
8 Judge, he tells you exactly what happened.

9 How does he know? He is sitting on a
10 bench right here outside of Jesse Clemons' room.

11 He later gets moved to the cage. He
12 is in an essential position.

13 He never said he saw anybody being
14 beaten in the rooms. What he said was he heard
15 people being beaten in the rooms.

16 He also said he saw police officers
17 going into the office marked DC, that would be where
18 Damoni Clemons was, with something black, not a
19 flashlight, might have looked like a stun gun.

20 Now Myron James is credible. He
21 couldn't remember, let's see. I think one of the
22 questions that Miss Hanlon asked was could you
23 describe the officers.

24 He said there were a lot of

1 officers.

2 Did some of them have moustaches she
3 asked?

4 "Yes, some of them did. I don't
5 remember which ones."

6 Is that relevant or does the fact
7 that his recall is so good about what happened and
8 who got beaten up and what Jesse looked like when he
9 walked out into that lineup?

10 Myron James is a credible witness.
11 His testimony is corroborated to some extent by
12 testimony you heard early on from Jesse's mother,
13 Casandra Clemons who says the police came to her
14 house. She told them where Jesse might be. She
15 went in a car with them. Jesse was later arrested
16 and she is sitting in the alley and she sees them
17 bringing Jesse down the stairs and beating him with
18 their flashlights and their hands.

19 Now the police who testified have not
20 denied that Casandra Clemons was on the scene. The
21 testimony was that yes she was sitting in a squad
22 car, a separate squad car, when Jesse was arrested
23 and later in Area 3.

24 She said she heard screams.

1 She was not sure which of her sons
2 but several of her sons were being beaten up or she
3 heard their screams.

4 If you combine her testimony with
5 what happened on the street with Myron James' very
6 credible testimony about what happened in the cage
7 this amounts, we feel, to the State not carrying its
8 burden.

9 Its burden is to show that Jesse's
10 confession was not coerced.

11 The officers that testified the first
12 day remembered seeing his hand injured, Det.
13 Boudreau did not. But both Maslanka and Det.
14 O'Brien remembers that his hand was hurt.

15 On top of that, your Honor, Jesse was
16 taken to the hospital.

17 His mother testified that he went to
18 Mercy Hospital and that his hand was injured; he was
19 taken there.

20 Now there is a case, your Honor,
21 People versus Banks, and in People versus Banks the
22 State is required to show how a person injured in
23 police custody got injured.

24 There is a presumption that Clemons

1 might have been injured in police custody. They
2 called Dr. Ramos to show why.

3 But I suggest Dr. Ramos' testimony is
4 very interesting.

5 First of all who brings Jesse Clemons
6 to Dr. Ramos? The police. Who takes him back? The
7 police? Who are there while he is being examined?
8 The police.

9 Jesse can't really, if he wants to
10 save his hide can't really say to Dr. Ramos in the
11 presence of the police "they beat me up" because he
12 knows when he is taken back he will get beaten
13 again.

14 What does he say? He says something
15 very interesting, I feel, your Honor.

16 He tells the doctor, he says "how did
17 you injure yourself."

18 "I injured my hand in a fight last
19 night."

20 Now what does last night mean?

21 He is being examined September 26th
22 in the morning. Last night was the night that he
23 was arrested; in custody.

24 Now on his statement it says, at the

1 bottom of his statement that he signed, "I injured
2 my hand earlier in the week in a fight."

3 What is consistent? The fact that he
4 injured it in a fight.

5 What is not consistent? The fact he
6 tells the police, "I injured it earlier in a
7 fight."

8 What is he trying to tell Dr. Ramos?
9 He can't say "the police beat it out of me last
10 night." But he slips.

11 Where is the truth? The truth is
12 last night. Where was he last night? In police
13 custody.

14 I suggest, your Honor, that the State
15 has not met its burden; that Jesse Clemons'
16 confession was freely and voluntarily given and we
17 would ask you to suppress his confession.

18 MS. HANLON: To begin with, Judge, the only
19 evidence you heard of any injury to Jesse Clemons
20 was a little injury to his finger.

21 What we have presented to you, Judge,
22 was Dr. Ramos, who testified that she examined him
23 and that Jesse Clemons told her he was involved in a
24 fist fight on September 25th, 1991.

1 If you remember, Judge, from Det.
2 O'Brien's testimony that Jesse Clemons was not
3 arrested until 2:00 clock in the morning September
4 26th, 1991.

5 We also presented testimony, Judge,
6 from his handwritten statement, and in that
7 statement it is right in there; Jesse states he
8 injured his finger or injured his hand in a fist
9 fight.

10 That is the way it was. We are not
11 trying to hide that. His finger was injured. It is
12 absolutely true.

13 No evidence that it was injured by
14 the police. Quite to the contrary, Judge, and I
15 don't want to argue, you already denied the motion
16 based on the testimony other than Myron James, which
17 counsel reopened --

18 THE COURT: But I am considering changing. I
19 find James very credible.

20 Given the atmosphere that existed in
21 that District with eleven people under suspicion in
22 custody in the same location the atmosphere must
23 have been horrendously oppressive and I am going to
24 suppress the statements, but you can argue.

1 MS. HANLON: I would like to argue because I
2 think that all the witnesses that they presented are
3 inconsistent.

4 The mother initially tells you,
5 Judge, she was there when Jesse was arrested in the
6 apartment. The police brought her there. There is
7 no quarrel about that.

8 The police brought her there to find
9 Jesse Clemons.

10 She tells you the beating started
11 inside a house.

12 THE COURT: I am not talking about the beating.
13 I am concerned about the fact that eleven suspects
14 in the same room being questioned periodically from
15 time to time; that is oppressive. I am going to
16 suppress it on the basis that I think there is a
17 likelihood there was some screaming going on and I
18 am going to suppress this statement.

19 MS. HANLON: You don't want to hear any other
20 argument?

21 THE COURT: You can put your argument on the
22 record but I will suppress the statement.

23 MS. HANLON: First of all Myron James, who he is
24 calling a credible witness, he is on probation for a

1 drug charge.

2 THE COURT: That does not make him uncredible
3 because he is on probation.

4 MS. HANLON: How about --

5 THE COURT: You had a chance to cross examine
6 him and you didn't touch him.

7 MS. HANLON: Judge, the only thing I can say as
8 to Myron James is that he testified he is friends
9 with Jesse Clemons, that he has known him for four
10 years, he has been in a gang for seven or eight
11 years. He told you he was friends with Marcus
12 Wiggins.

13 What is interesting, Judge, is that
14 if he now is coming forward to say that he sees
15 someone getting hit, although when I asked him he
16 said he didn't --

17 THE COURT: No. I am not basing my suppression
18 on his credibility as to someone being struck. I am
19 basing my ruling solely on the oppressive atmosphere
20 that existed in that, in that headquarters on that
21 evening with eleven people in custody being
22 questioned about this crime.

23 MS. HANLON: If I may just address that point
24 then as long as you are saying you are not finding

1 it on a beating and not finding it on any of the
2 electric thing they brought up.

3 As far as the oppressive nature,
4 Judge, Area 3 Violent Crimes; this is it.

5 THE COURT: But they don't have to bring eleven
6 people up there. They have a holding cell
7 downstairs. That they could have left everybody
8 downstairs and brought them up individually.

9 MS. HANLON: Judge, out of the six defendants
10 there was six defendants charged.

11 THE COURT: Finish up, Miss Hanlon, please.

12 MS. HANLON: They were all in separate rooms.
13 There is nothing else the police could have done in
14 the case.

15 THE COURT: Sure there is.

16 Motion to Suppress sustained.

17 January 11th for trial.

18 All right stand in recess until 10:00
19 o'clock tomorrow morning.

20 (Which were all the proceedings had
21 at the hearing of the above-entitled
22 cause. Case continued to 1/11/'93.)

23

24

1
2 STATE OF ILLINOIS)
3 COUNTY OF COOK) SS:
4

Patricia V. Chaloux

Official Court Reporter of the
Circuit Court of Cook County